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In The
Supreme Court of the United States

JOSEPH SCHEIDLER, *ET AL.*,

Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., *ET AL.*,

Respondents.

OPERATION RESCUE,

Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., *ET AL.*,

Respondents.

On Writs of Certiorari To The United States Court of Appeals For The Seventh Circuit

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BRIEF OF EMILY LYONS AS *AMICA CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF THE AMICA CURIAE[1]

At 7:30 a.m. a bomb that had been placed in a potted plant outside the clinic I worked in exploded about 15 feet from where I was standing. Someone who considers himself pro-life murdered a police officer.

The pipe bomb contained dynamite and nails. I am often asked what my injuries were. I usually ask them, "How much time do you have?" I had first, second, and third degree burns. The trauma surgeon described it by saying that I had hundreds of wounds. He had served in Desert Storm and had seen others who had been bombed. He was shocked to see a bombing victim back in the United States.

Metal tore my left eye to the extent that it had to be removed. Metal also shot into my right eye. After several operations and months of waiting, I am able to see well enough to read a little, but my sight will never be like it was. My face, eye sockets, and teeth were broken, my left ear was ruptured, my right hand was mangled, a hole about the size of a fist was torn in my abdomen, exposing my intestines. Both knees were so full of nails that they had to be opened and the nails cleaned out before they would move again. The skin was torn off both shins, exposing bone and requiring skin grafts. Both bones in my

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[1] No counsel for any party had any role in authoring this brief, and no persons other than *amica curiae* and her counsel made any monetary contribution to its preparation and submission. Written consents from the parties to the filing of *amicus* briefs in this case are on file with the Clerk of the Court.

lower left leg were shattered, and the doctors feared amputation of one leg. I had dozens of complete nails inside my body, and hundreds of metal fragments and other debris. The blast was so strong it shredded my clothing and blew my shoes off.

I have had 12 operations this year and expect many more next year. As a result, I am a trained nurse with 20 years experience who cannot write, read or stand for long periods of time.[2]

Emily Lyons, the author of these words, has an interest in seeing that terrorists like Eric Rudolph, who planted the 1998 Birmingham bomb that so gravely injured her, are vigorously prosecuted, including under federal statutes. As a survivor of that bombing who can no longer work as a nurse, she is deeply troubled by Petitioners' attempts to cloak violence in the garb of protected expression.

Emily Lyons simply reported to work at the women's clinic where she had served for four years, New Woman/All Women, on January 29, 1998. No one asked her if she consented to trade her eyesight or physical vitality for the privilege. Having endured the horror of that day and the horror of repeated surgeries to return to her a fraction of her former body and life before that day, she retains the courage and the belief in the rule of law to caution her fellow citizens: "Do not allow anyone or anything, be it fear or intimidation, to make you lose sight

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[2] This speech, "To Hell and Back," was given by Emily Lyons in 1998. Emily Lyons has now had 21 surgeries.

of the main goal–to provide and support a woman's right to reproductive health as they see fit." *Id.*

SUMMARY OF ARGUMENT

This case is not a judicial plebiscite on the right to peaceful protest activities, although Petitioners labor mightily to transform it into one.

Contrary to Petitioners' suggestion, bombs, blockades and blitzes of women's health clinics share no kinship with protected forms of nonviolent expression epitomized by the civil rights sit-ins that are seared into our nation's conscience. Nor do they have anything in common with political protestors of any stripe accorded First Amendment protection. Those who plant bombs or use clubs, fists, violent blockades, or nefarious means to express their dissent from this Court's substantive due process jurisprudence are criminals who should be punished as criminals, however sincere their religious or political convictions. Architects and purveyors of violence, whether to the degree Emily Lyons suffered or to the degree the jury found in this case, are criminals, not advocates, hoodlums, not heroes. "Free speech" is a value that should lead us as a polity to the truth. "Free speech," in the hands of the Petitioners, is a tool of dissimulation.

ARGUMENT

VIOLENT CRIMINAL ACTIVITY IS NEITHER PROTECTED SPEECH NOR HEROIC POLITICAL DISSENT

Petitioners describe these proceedings as Dickensian,[3] but their briefs are actually more evocative of George Orwell. Petitioners appropriate the mantle of the Civil Rights Movement to cloak tactics never countenanced by that movement. They wear the democratic constitutionalist's robes before this Court, but only by way of camouflage. Their rhetoric is not their reality.

A. Violent Criminal Activity Is Not Protected Speech.

In Petitioners' Newspeak, acts of violence and physical blockades are merely "vigorous protests." (Scheidler Pet. for Cert. at 1.) What was experienced by patients at the clinics as assault and obstruction is resurrected on the tabula rasa of legal briefs as "sit-ins." (OR Pet. for Cert. at 3, 4 n.3.)[4] They insist that a factually specific, narrow ruling by the Seventh Circuit, dealing with a discrete injunction, has extravagant reach. They warn of "the threat posed by the decision below ... to labor and

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[3] Petitioners liken this proceeding to the Chancery suit, *Jarndyce v. Jarndyce*, described in Charles Dickens' *Bleak House*.

[4] Interestingly, OR concedes that the conduct it now casts as "demonstrations" and "sit-ins" by "political protestors" were in fact "obstructive." (*See* OR Pet. for Cert. at 5.)

political protestors." (Scheidler Rep. Br. at 10.) They insist, "There is no reason why, if the Seventh Circuit's latest interpretation of the Hobbs Act is correct, RICO actions based on predicate Hobbs Act offenses could not also be punished against social protestors of all stripes, including those demonstrating for civil rights, environmental causes, or animal rights." (Scheidler Pet. for Cert. at 23.) Conveniently, they forget that NOW never once attempted to sue true protesters, those who exercise their First Amendment right to pray, leaflet, shout, or even engage in name-calling.

Petitioners' revision of the history of clinic blockades and clinic violence should be noted for the Orwellian feat that it is: "the defense of the indefensible." George Orwell, "Politics and the English Language," in *The Orwell Reader* 363 (1984 ed.). In this rhetorical world, the Civil Rights sit-ins, the objective of which was to *secure* access to public accommodations on the same terms as white citizens, are analogized to the blockaders at the clinics. But the truth of the desegregation sit-ins cannot be revised by false analogy: the protestors wanted a place at the table, not to keep other patrons from theirs. The sit-in manual commanded: "Don't strike back, or curse if attacked ... Don't block entrances." *See* Howard Sitkoff, *The Struggle for Black Equality* 67 (1993 ed.).

This Court knows the difference between seeking access and blocking it, having upheld the right "in a peaceable and orderly manner to protest by silent and reproachful presence,[5] in a place where the protestant has

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[5] Or, it should be noted, to chant, speak, counsel or attempt to persuade, consistent with reasonable time, place and manner

every right to be," *Brown v. Louisiana*, 383 U.S. 131, 142 (1966), while allowing to stand the criminal-trespass convictions of 200 students who blocked access to the jail to protest the arrest of civil rights demonstrators. *Adderly v. Florida*, 389 U.S. 39 (1966). The tactics Petitioners seek to defend call to mind not the lunch counters of Greensboro, but George Wallace blocking the doors at Tuscaloosa.

The Respondents' construction of the Hobbs Act would not render the Reverend King a racketeer or transform Gandhi into an extortionist. Contrary to Petitioners' insinuations, it is not "social protest" that we punish when we punish violence. Social protest does not mangle bodies. Gandhi had no gunpowder. Dr. King did not block white citizens from exercising the franchise by burning the voting booth or forcing them to run a gauntlet of angry African-Americans hurling threats or fists at them. Fifty-lb. sticks of dynamite, galvanized nails, and anti-personnel backup bombs are not political tracts.

The rhetorical sleights-of-hand that characterize Petitioners' image-sculpting provide insight into why they chose to compare the violent persons in their ranks to those peaceful protestors who marched over Selma's Edmund Pettus Bridge. Operation Rescue is a two-faced Janus, woundedly protesting its moderation here while presenting quite another face to the troops. For public and judicial consumption, "blitzes" and blockades are reinvented as Clara Bartonesque "rescues," and angry haranguers of patients and clinic staff are "sidewalk counselors." *See* Abigail A. Fuller, "Conflict Resolution and Conservative

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constraints. Threats of bodily harm are not reasonable.

Ideology: The Use of Civil Disobedience by Operation Rescue," *available at* www.colorado.edu/conflict/. In Petitioners' briefs here, a clinic is a clinic. Among the troops, a clinic is "a 'death mill' (the word 'mill' connoting a factory where procedures are performed rotely) or an 'abortuary.'" *Id.* Pro-choice volunteers who assist patients in navigating the gauntlet at an Operation Rescue occupation are "deathscorts, a play on the word escort, which is used by prochoice people." *Id.*

In this Court, Petitioners are respectful and respectable citizens who would never use language worthy of Big Brother's "Two Minutes' Hate"[6] as they exhort their own to occupy the premises and obstruct access to medical procedures. When the public relations antennae are relaxed in their own circles, however, their words are less measured and their message delivered with a menace that is not always encrypted. When forming PLAN, Petitioner Scheidler vowed to stop abortion "by any means necessary" and proclaimed "a year of pain and fear" for anyone seeking or providing an abortion. *See* "NOW v. Scheidler Timeline: The complete story," *National NOW Times* (Fall 2002), *available at* www.findarticles.com. The man who described his brainchild as a "pro-life Mafia" in other fora professes astonishment at being sued under RICO in the judicial forum. *See id. See also* Frederick Clarkson, "Terror in the Name of the Lord," *Ms. Magazine* (July 2002), *at* www.msmagazine.com.

Petitioner Scheidler insists that he does not condone violence and that he supports robust speech. He has a strange notion of violence and a strange concept of the

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[6] *See* George Orwell, *1984* (1949, HBJ: New York).